

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4972 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

JASUBHA PUNJUBHA GOHIL

Versus

STATE OF GUJARAT

Appearance:

MR SHAKTISINH GOHIL for Petitioner No. 1
Mr.Pujari, Assistant GOVERNMENT PLEADER,
for Respondent Nos. 1-4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/08/2004

ORAL JUDGEMENT

Rule. Mr.Pujari, learned AGP, waives service of
rule on behalf of the respondents.

With the consent of the parties, the matter is

taken up for final hearing today.

By filing this petition, the petitioner has challenged the order passed by the District Magistrate, Bhavnagar, dated 7.6.2001 as well as the order of the State Government dated 12th October, 2001, by which the appeal of the petitioner is not considered on the ground of delay.

The case of the petitioner is that he had applied for a video licence for running a Video Theatre at village Alang, Taluka and District : Bhavnagar. The District Magistrate, by his order dated 7th June, 2001, came to the conclusion that in view of the judgment of the Supreme Court in Writ Petition No.664 of 1993, the petitioner cannot make any pucca construction within a range of 500 metres from the high tide area of the sea. He, therefore, rejected the same, against which the petitioner preferred an appeal. However, the State Government, by its order dated 12.10.2001, rejected the same on the ground that the appeal is time barred. The petitioner, thereafter, applied for review of the said order. Even the review application was rejected on the ground that it is time barred. It seems that the petitioner has not remained present also before the State Government. It is the said order, which is impugned in this petition.

Mr.Gohil, learned Advocate for the petitioner, submitted that so far as the order of the District Magistrate is concerned, he has taken into account the interim order of the Supreme Court. However, after the final judgment of the Supreme Court, the petitioner is entitled to construct within the prescribed limit as per the order of the Supreme Court. He submitted that the interim order of the Supreme Court no longer survives and, therefore, the District Magistrate has committed an error in not considering the final judgment of the Supreme Court in Indian Council for Enviro-Legal Action v. Union of India and others, which is reported in AIR 1995 SC 2252. In the aforesaid decision, the Apex Court has modified the earlier order dated 12th December, 1994.

He also further submitted that he has deposited Rs.1,50,000/-. However, in my view and in view of the submission of Mr.Gohil, when the interim order of the Supreme Court no longer survives, it would be just and proper to direct the State Government to hear the appeal preferred by the petitioner without raising the ground of limitation.

Under the circumstances, the order of the State Government, by which the appeal of the petitioner is rejected on the ground of limitation, as well as the order passed in review, are quashed and set aside. The matter is sent back to the Secretary, Information and Broadcasting Department, Sachivalaya, Gandhinagar, to rehear the appeal of the petitioner, on merits.

The effect of this order is that the delay in preferring the appeal is condoned and now, the appeal of the petitioner will be decided on merits and the Secretary may pass appropriate order in accordance with law after considering the effect of the Supreme Court judgment as well as in accordance with the Rules and Regulations. Such appeal should be decided latest by 25th October, 2004. Mr.Gohil, learned Advocate for the petitioner, has assured the Court that the petitioner or his representative will remain present, with necessary documents, at the time when the appeal is heard. The scheduled date of hearing may be intimated to the petitioner by the State Government so that the petitioner or his representative can remain present for arguing the appeal.

The petition is allowed to the above extent.
Rule is made absolute accordingly. No costs.

26th August, 2004 (P.B. Majmudar, J.)

(apj)